

In response to this concern, Part III.D of the draft general permit requires compliance with water quality standards. Also, an antidegradation policy consistent with 40 CFR 131.12 is required to be part of water quality standards. As such, the permit requires that any degradation of receiving waters caused by the discharges must be consistent with antidegradation requirements. Further, Part I.B.3.d of the general permit excludes from coverage discharges from construction sites with a reasonable potential to cause or contribute to violations of water quality standards. Coverage under an individual permit, or an alternate general permit would be required for discharges not authorized by the general permit in question here. The individual permit or alternate general permit could include specific requirements to address the concerns of the commenter regarding the implications of the discharge from a particular project for the receiving waters. EPA believes that these procedures and requirements appropriately address the concerns of the commenter and has not included additional conditions in response to the comment.

The commenter also recommended that the general permit application (i.e., the NOI form) should be modified to require the submittal of certain additional information and analyses for projects with the potential to degrade habitat as discussed above. EPA believes, however, for ease of use and the cost of information collection, the information requirements of the NOI form should be kept to a minimum and that the commenter's concern is best addressed through individual, or alternate general permitting. As such, the NOI form was not modified in response to this comment.

Site Data Requirements for the SWPPP

A commenter recommended that Part IV.D.1.d of the draft permit be modified to require certain additional site data for the SWPPP. The draft permit had only required existing soil data, which the commenter believed was inadequate because existing data may not be available in some cases. In addition, the commenter recommended that the permit require slope information and a comparison of pre-development and post-development runoff coefficients.

In response to the first comment, EPA has deleted the word "existing" from the final permit in relation to the soil data. Soil data will already exist for the vast majority of construction projects and lack of existing data will rarely be a problem. However, EPA agrees that soil data are important in developing an

appropriate SWPPP and that if existing data are not available, the permittee must obtain sufficient data to develop an appropriate SWPPP by other means.

With regards to slope information at the construction site, EPA believes that the draft permit already requires adequate descriptive information. The final permit, though, does require an estimate of the pre-construction and post-construction runoff coefficients as recommended by the commenter. This information will help in assessing the potential hydrological impacts of a particular project.

Maintenance of Structural Storm Water Controls

A commenter expressed concern that the permit does not require maintenance for structural controls which may be included in a new development for storm water pollution control after the development has been completed. Another commenter recommended that the permit at least urge permittees to consider long term maintenance of the controls.

EPA believes that permittees operating under the general construction permit should not be responsible for the longer term maintenance of structural BMPs. The permit is intended to apply to discharges described at 40 CFR 122.26(b)(14)(x) which applies to discharges from construction activity only. However, the final fact sheet was modified to include in the discussion of structural controls a recommendation that permittees consider longer term maintenance in the selection of their controls. The permit itself also notes that discharges from the structural controls may be subject to other municipal or industrial storm water permits which could address the maintenance of the controls. EPA strongly recommends that arrangements be made for the long-term maintenance of BMPs to control storm water discharges.

Contouring and Sensitive Area Protection

A commenter recommended that more discussion be included in the fact sheet concerning contouring (matching a development to the lay of the land) and sensitive area protection. More discussion of these issues in the fact sheet would increase awareness among developers of these issues and their importance. EPA agrees that a discussion of these issues would be beneficial and has included such a discussion in the final fact sheet.

Phasing Activities at Construction Sites

A commenter contended that phasing of construction activities for a given project is a particularly important BMP which should be required by the permit (at least for sites greater than 10 acres in size) and discussed in more detail in the fact sheet to emphasize its importance.

While EPA agrees with the commenter on the importance of phasing, the Agency disagrees that it should necessarily be required for all projects. The general permit applies to a wide variety of projects in many different geographic locations, and specific requirements for phasing may not be appropriate or provide adequate flexibility in some cases. However, as recommended by the commenter, additional discussion of phasing was added to the final fact sheet. When individual SWPPPs are evaluated pursuant to Part IV.B of the permit, phasing could be required as appropriate for individual construction projects.

Requirements for Minimum Control Measures

A commenter recommended that the permit should include certain minimum requirements for controls. For example, in developing SWPPPs permittees should be required to select some minimum number of controls from a menu which would be provided.

EPA has provided a menu of potential control measures from which permittees may select appropriate controls for their projects. These controls (which are not necessarily an exhaustive list) are found in Parts IV.D.2 and 3 of the permit and are also elaborated on in the fact sheet. However, EPA disagrees that the permit should require some minimum number of controls for each project. As mentioned earlier, adequate flexibility must be provided given the wide variety of projects and geographic areas which are covered by the general permit. SWPPPs must nevertheless include an adequate number of BMPs to comply with the requirements of the permit.

Controls for Construction Debris and Chemicals

A commenter noted that Part IV.D.2.a(1)(e) of the draft permit requires control measures for litter, construction debris and chemicals at a site, but then suggests screening as a potential method for control. The commenter argued that screening would be inappropriate as a control measure for construction chemicals and that other measures should be required. In addition, the commenter recommended continuous litter removal rather than daily removal as suggested.

Part IV.D.2.a(1)(e) suggests control measures for these types of pollutants but does not indicate that the suggestions are the only measures which should be considered. In addition, Part IV.D.2.c of the permit requires a narrative description of practices to reduce pollutants from construction related materials. As such, EPA believes that the permit addresses the concerns of the commenter. Further, the suggestion in Part IV.D.2.a(1)(e) for daily pick-up of litter and debris is only a suggestion; if more frequent pick-up is needed for adequate control of pollutants, then it should be included in the SWPPP.

Another commenter objected to the requirement in Part IV.D.2.c for an inventory of construction materials noting that the materials may not be known at the time the initial SWPPP is prepared. EPA believes that this is a valid concern, and the final permit was modified to require a description of construction materials expected to be stored on-site with updates to the description as appropriate.

Inspection of Inaccessible Discharge Locations

A commenter objected to the provision in Part IV.D.4.a of the draft permit which only requires inspections of discharge locations which are accessible. If a discharge location is inaccessible, the commenter recommended that the nearest possible downstream location be inspected.

The provision exempting inspections of inaccessible discharge locations was included in the permit to ensure the safety of construction site personnel. However, in response to the commenter's concern, the final permit includes a requirement for downstream inspections to assess the impacts of the discharges to the extent that such inspections are practicable.

Miscellaneous Issues

Several miscellaneous comments were also received which relate to the issue of the level of environmental protection provided by the permit. For example, a commenter supported a strong enforcement program to accompany the permit and EPA would agree that enforcement is a critical element of the program which we are also implementing to the maximum extent which the Agency's resources allow. A commenter also supported Part IV.D.2 of the draft permit which requires that the SWPPP identify the permittees which are responsible for implementation of each control measure. In addition, this commenter supported the requirement in Part

IV.D.4.b of the permit which requires revisions of SWPPPs within 7 days if an inspection indicates that the revisions are necessary. EPA agrees with the commenter on these issues and has retained the requirements in the final permit.

A commenter noted a discrepancy between Part IV.D.2.a.(3) of the draft permit and the corresponding discussion in section IV.C.5.b.(iii) of the draft fact sheet. Part IV.D.2.a.(3) of the permit requires controls to the degree attainable, while the fact sheet states and that controls are required to the degree economically attainable. The commenter objected to the inclusion of economic considerations. The commenter also recommended that "degree attainable" should be replaced by "greatest degree attainable." For consistency and in response to this comment, EPA has revised the final fact sheet by replacing the term "degree economically attainable" with "degree attainable." However, EPA believes the words "degree attainable" are suitable for describing the level of effort which is required and has not included the word "greatest" as recommended by the commenter.

This commenter also noted another apparent inconsistency between the draft fact sheet (section IV.C.5.b.(iii) and Part IV.D.2.a.(3)(a) of the draft permit). For drainage locations which serve 10 or more acres for which a sediment basin (providing 3,600 cubic feet per acre drained) is not available, the fact sheet indicates that at a minimum silt fences or the equivalent are required. The permit, however, indicates that silt fences, vegetative buffer strips or the equivalent are required. The commenter argued that silt fences are often ineffective and should not be cited as some sort of standard. In addition, the commenter recommended that any alternative to a sediment basin should genuinely be the equivalent of a sediment basin.

For consistency between the final fact sheet and permit, EPA has modified the final fact sheet to include vegetative buffer strips as well as silt fences. Reference to vegetative buffer strips was inadvertently omitted from the draft fact sheet. However, the permit does not require that the alternate controls necessarily be the equivalent of sediment basins since this may not be attainable. We would point out that the permit does require that smaller basins be used to extent that this is possible.

A commenter also recommended that structural controls should not be placed in wetlands. In response, EPA would note that the placement of structures in wetlands and other waters of the United

States is regulated under section 404 of the CWA, rather than the NPDES permit program. However, the fact sheet does recommend that such controls be placed on upland soils to the degree attainable.

A commenter also recommended that emergency plans for erosion protection should be required in SWPPPs when especially heavy rainfall is predicted. EPA, however, believes that the various elements of the permit which address erosion protection already require an appropriate level of overall preparation for the storms which may occur in a given area. Therefore, special requirements for especially heavy rain (when predicted) were not included in the final permit.

A commenter recommended that for clarity, the definition of point source in Part IX of the draft permit should be modified to include swales as a type of discharge conveyance. In response to this comment, EPA would note that the definition of point source which is used in the permit was obtained from NPDES regulations at 40 CFR 122.2 and the Clean Water Act itself in section 502. EPA is not at liberty to modify such fundamental definitions of the NPDES permit program within the context of the issuance of a general permit. Moreover, EPA believes that the existing definition, and previous EPA guidance on this matter (see for example the discussion in the preamble to the storm water application regulations at 55 FR 47996) are sufficient to clearly indicate that swales could be considered point sources.

This commenter also recommended that Part VI.O (Inspection and Entry) of the draft permit be modified to allow entry by any local government official, not just those with responsibility for an MS4. In response to this issue, EPA would point out that Part VI.O originates from NPDES regulations at 40 CFR 122.41(i) which sets forth conditions which must included in all NPDES permits. The wording of the condition has been modified slightly to accommodate the storm water permit (*i.e.*, the MS4 operator would be acting as an authorized representative of the Director) while retaining the intent of the regulations. However, EPA has not modified the condition in accordance with the recommendation of the commenter since "any local government official" would not necessarily be considered a representative of the Director.

Municipal Role

Several comments and questions were received pertaining to the role of municipalities in implementing the requirements of the construction general

permit (CGP). In particular, questions were raised regarding municipal responsibilities to inform dischargers of the new permit and its requirements, and also whether municipalities would be responsible for checking off-site storage areas and spill reporting. A commenter also recommended permitting of municipal separate storm sewer systems (MS4s) on a watershed basis to provide better coordination among the various MS4 programs for construction sites within a watershed. Additional recommendations which were received included: (1) NOIs should not be required in MS4s serving a population of 100,000 or more where the equivalent of a storm water pollution prevention plan is already required by municipal ordinances; (2) construction should be exempt from permitting if the municipality requires 100% containment of post-development runoff; and (3) overall permitting should be simplified, and a municipality might serve as a suitable location where a builder could get all required local, State and Federal permits.

With regard to the questions concerning municipal responsibilities for construction projects, the operator of the construction project is primarily responsible for compliance with general permit requirements such as NOI submittal and spill reporting. However, MS4 operators may also have a role depending on the requirements of their MS4 permit. NPDES regulations at 40 CFR 122.26(d)(2)(iv)(D) require that MS4 operators develop a program for controlling pollutants in construction site runoff entering the MS4, including activities such as site inspections and educational activities. As such, MS4 operators may be required to implement the types of activities contemplated by the commenters. However, the specific requirements would be determined by the MS4 permits rather than the construction general permit. Therefore, no changes were made to the permit language regarding MS4 responsibilities.

With regard to the issue of watershed permitting, NPDES regulations already provide the necessary authority for such permitting. The definitions of the terms large MS4 and medium MS4 include any MS4s within a watershed which need to be permitted because of factors such as storm sewer interconnections within a watershed (40 CFR 122.26(b)(4) and (7)). EPA has also supported watershed permitting in a previous document entitled the Watershed Approach Framework (June 1996). In addition, the Urban Wet Weather Flows Federal Advisory Committee, which EPA convened in May 1995, has prepared a draft guidance document

specifically for wet weather flows which also encourages permitting on watershed basis.

EPA also considered the three other recommendations related to the municipal role in the regulation of construction site runoff. EPA is considering how to deal with qualifying local programs in Phase II of the Agency's storm water permitting program. A few permitting authorities (e.g., the State of Michigan) have developed programs in which most of the requirements consist of local requirements which are referenced by their permits. However, for the States in which the general permit was proposed, EPA does not have the necessary information at this time to determine whether such an arrangement would be appropriate. If the commenter wishes to explore this matter further, alternate general permits be pursued in particular States or municipalities.

In response to the second recommendation, the CGP is intended to regulate construction site runoff during construction rather than after final stabilization is achieved. As such, containment of post-construction runoff is irrelevant to the question of whether a construction storm water permit is needed.

With regard to the third recommendation, EPA concurs that regulatory agencies should try to simplify permitting whenever possible. Many counties have already developed programs whereby information and forms can be obtained at a single location. The Urban Wet Weather Flows Advisory Committee is also attempting to find practical ways of streamlining the storm water program. However, it is not possible to completely accommodate the recommendation since there are also certain legal constraints which must be observed concerning which agency must actually issue required permits. No changes to the permit were made in response to this issue.

Clarification of the Permit Language

Several commenters felt that it would be difficult for the average permittee to follow the terms of the SWPPP and the permit.

The proposed permit was structured after the 1992 permit (with modifications reflecting new concerns and laws), so there is five years of industry experience in implementing the general terms of the permit. The ease or difficulty of following an SWPPP is dependent on the complexity of the permittee's self-generated plan. However, EPA has revised various portions of the permit, including those

related to permittee roles and responsibilities and the SWPPP to improve readability and clarity.

Cost Concerns

Many members of the regulated community (particularly the building industry and utility companies) were concerned with the costs of controlling the quality of storm water discharged from construction sites, and for certifying permit eligibility pursuant to the Endangered Species Act (ESA) and National Historic Preservation Act (NHPA). Residential builders were concerned with the impact permit compliance would have on new home prices. Others commented that EPA failed to recognize the additive nature of the costs of storm water sediment and erosion controls and storm water management measures, and the economic impact they have on small businesses. Permit compliance was quoted to add from \$1,000 to over \$1,850 to each home's price. A utility company estimated that their compliance cost would be approximately \$1,000 per lot, which would need to be passed on to the developers.

EPA recognizes that an investment must be made to ensure erosion and sediment runoff are minimized at construction sites. As explained in the ESA section of this Summary of Response to Comments and Addendum A of the permit, the Agency included evaluation conditions and eligibility restrictions in the permit based on requirements imposed on the EPA under other Federal laws, specifically evaluation and consultation requirements related to the protection of endangered species. As discussed previously, EPA may modify the permit to reflect historic preservation concerns. Enough flexibility exists in the permit so that a permittee can design and implement a storm water pollution prevention plan in an efficient and cost effective manner which will meet the goals of the NPDES program and the Clean Water Act, as well as the eligibility restrictions derived from Agency consultations with other federal agencies pursuant to other federal laws. EPA has also significantly reduced the burden on utility company service line installations by limiting the situations when these activities would require permit coverage. EPA believes that the majority of these activities can be classified as subcontractor-type work which can be more efficiently covered under a site operator's previously prepared SWPPP.

EPA believes that in most cases there is not an onerous burden caused by

cumulative expenditures for storm water controls. Many best management practices are single-installation only and are nominal compared with the overall site-development costs. In addition, some measures such as sod stabilization, pond construction and tree protection add value to the development. While storm water control costs incurred by builders and developers may be passed onto consumers, the consequences of not providing storm water controls is the degradation of streams, lakes and wetlands for purposes such as recreation, fishing and sources of drinking water. This not only upsets an area's ecology and aesthetics, but also ultimately devalues the area and makes it less attractive to investors.

The per-lot cost figures cited by developers for permit compliance were not substantiated or correlated to a lot or development size. Assuming the storm water expenditures were accurate, EPA questions whether they would actually be prohibitive for builders or home purchasers. For instance, in the western United States the median new-home price for the first three quarters of 1997 was \$159,500 according to information from the U.S. Census Bureau as supplied by the National Association of Homebuilders. The minimum-sized development triggering NPDES permitting, five acres, might realistically be divided into ten half-acre plots, making the development worth nearly \$1.6 million. A \$1000 surcharge assessed to a homeowner represents a 0.63% expenditure while \$1,850 represents 1.16% expenditure. According to the Economic Analysis of the Proposed Storm Water Phase II Rule, a 5-acre site would require soil and erosion controls costing \$6,382 (mean cost in 1997 dollars) and \$885 in costs related to NOI submission and SWPPP generation/implementation. The combined total of \$7,267 represents only 0.45% of the value of the development to the builder.

Several trade groups, utility companies, and individuals commented that the cumulative cost of permit compliance was high enough that constituted a "significant regulatory action" and should trigger review of the permit by the Office of Management and Budget (OMB) under Executive Order 12866. Commenters felt the goal of clean water could be attained with easier, less costly requirements and that more attention should be paid to a cost-benefit analysis.

According to Executive Order 12866, agencies must determine if a regulatory action is "significant" and consequently subject to the requirements of the

Executive Order. Section 3(e) of the Executive Order defines "regulatory action" to mean "any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking." As explained in response to comments regarding the Regulatory Flexibility Act, EPA believes that today's general permit is not a "rule." Also noted in that discussion, however, EPA's conclusions on this issue have not been consistent over time. Notwithstanding any historical inconsistency on the legal identity of a general permit, OMB has waived review of general permits under Executive Order 12866 (and its predecessor, Executive Order 12291). OMB has reviewed some of the requirements under the general permit under its information collection review and approval role under the Paperwork Reduction Act.

Notwithstanding EPA's determination that the permits were not subject to formal OMB review, the Agency did evaluate the associated cost impacts. The major costs incurred by permittees are for sediment and erosion controls and for storm water management controls. Typical costs for these control measures are contained in the proposed permit (62 FR 29802-29803) where it is evident that they are nominal in relation to the costs associated with construction projects of five acres or more. It is important to point out that costs for any single project will depend on site-specific considerations and the expertise of permittees in preparing and implementing storm water pollution prevention plans. From some of the comments received it appeared that those commenters either did not fully understand the flexibility built into the permit for selecting the most cost-effective control measures or they simply overlooked opportunities for cost savings.

For example, one commenter estimated a cost based on the assumption that the permit required installation of silt fences on both sides of each residential lot, even though: (1) Silt fencing is but one acceptable perimeter control among a variety of options available under the CGP; (2) perimeter controls between lots may not be necessary when adjacent lots are under construction at the same time; and (3) if a silt fence is needed between adjacent lots, its cost could reasonably be split between the two lots. The commenter should also consider that if an adjoining lot was already stabilized,

a vegetative buffer strip might already be in place for that side and could be considered an alternative control measure at no additional cost.

Another factor to be considered regarding the burden the NPDES program imposes is the time and cost savings attainable with a general permit. This is particularly relevant for the endangered species protection requirements which must be completed before a Notice of Intent can be submitted. While surveys and assessments may be necessary in order to certify compliance with the ESA-related eligibility restrictions, the CGP allows permittees to utilize the investigations (and certifications) made by other parties in lieu of performing their own for a particular project area. If the only other option available is an individually drafted, site-specific NPDES permit, endangered species and historic preservation assessments would still need to be completed and the permit application would have to be submitted at least 90 days prior to commencement of construction per 40 CFR 122.21(c). Following application completion and Agency review, the EPA may need to complete potentially time-consuming consultations on endangered species. After completion of such consultations, EPA would need to prepare a draft individual permit and make it available for public notice and comment. The Agency would need to conduct a public hearing if, based on public comments received, there was significant public interest. Finally, the Agency would need to respond to public comments and make a final determination on issuance of the permit. Given the activities listed above and the time associated to complete each one, the time and subsequent cost required to issue an individual permit for a construction project could be significantly greater than that required for obtaining general permit coverage.

IX. Cost Estimates

The major costs associated with pollution prevention plans for construction activities include the costs of sediment and erosion controls (see Table 1) and the costs of storm water management measures (see Table 2). The CGP provides flexibility in developing controls for construction activities. Typically, most construction sites will employ a variety of the listed sediment and erosion controls and storm water management controls. In general, the larger a site is, the lower the per-acre cost of pollution prevention will be.

TABLE 1.—SEDIMENT AND EROSION CONTROL COSTS

Temporary seeding	\$1.00 per square foot
Permanent seeding	1.00 per square foot
Mulching	1.25 per square foot
Sod stabilization	4.00 per square foot
Vegetative buffer strips	1.00 per square foot
Protection of trees	30.00 to \$200.00 per tree set
Earth dikes	5.50 per linear foot
Silt fences	6.00 per linear foot
Drainage swales—grass	3.00 per square yard
Drainage swales—sod	4.00 per square yard
Drainage swales—riprap	45.00 per square yard
Drainage swales—asphalt	35.00 per square yard
Drainage swales—concrete	65.00 per square yard
Check dams—rock	100 per dam
Check dams—covered straw bales	50 per dam
Level spreader—earthen	4.00 per square yard
Level spreader—concrete	65.00 per square yard
Subsurface drain	2.25 per linear foot
Pipe slope drain	5.00 per linear foot
Temporary storm drain diversion	variable
Storm drain inlet protection	300 per inlet
Rock outlet protection	45 per square yard
Sediment traps	500 to \$7,000 per trap
Temporary sediment basins	5,000 to \$50,000 per basin
Sump pit	500 to \$7,000
Entrance stabilization	1,500 to \$5,000 per entrance
Entrance wash rack	2,000 per rack
Temporary waterway crossing	500 to \$1,500
Wind breaks	2.50 per linear foot

Practices such as sod stabilization and tree protection increase property values and satisfy consumer aesthetic needs.

Sources: "Means Site Work Cost Data," 9th edition, 1990, R.S. Means Company. "Sediment and Erosion Control, An Inventory of Current Practices," prepared by Kamber Engineering for U.S. EPA, April 1990.

TABLE 2.—ANNUALIZED COSTS OF SEVERAL STORM WATER MANAGEMENT OPTIONS FOR CONSTRUCTION SITES

	Annualized *	Annualized **
Wet Ponds	\$5,872	\$9,820
Dry Ponds	3,240	5,907
Dry Ponds with Extended Detention	3,110	5,413
Infiltration Trenches	4,134	6,359

* Cost for 9-acre developed area.

** Cost for 20-acre developed area.

Estimates based on methodology presented in "Cost of Urban Runoff Quality Controls," Wiegand, C., Schueler, T., Chittenden, W., and Jellick, D., Urban Runoff Quality—Impact and Quality Enhancement Technology, Proceedings of an Engineering Foundation Conference, ASCE, 1986, edited by B. Urbonas and L.A. Roesner.

Costs are presented in 1992 dollars. Annualized costs are based on a 10-year period and 10% discount rate. Estimates include a contingency cost of 25% of the construction cost and operation and maintenance costs of 5% of the construction cost. Land costs are not included.

X. Regulatory Review (Executive Order 12866)

Under Executive Order 12866, (58 FR 51735 [October 4, 1993]) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or

planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this re-issued general permit is not a "significant regulatory action" under the terms of Executive Order 12866. EPA has initiated informal OMB review of this general permit, specifically portions involving the information collection requirements under the Paperwork Reduction Act, and will complete a formal review for the Paperwork Reduction Act in the near future.

XI. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under UMRA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, UMRA section 205 generally requires EPA to identify and consider a

reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of UMRA section 205 do not apply when they are inconsistent with applicable law. Moreover, UMRA section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes an explanation with the final rule why the alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under UMRA section 203 a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating and advising small governments on compliance with the regulatory requirements.

A. UMRA Section 202 and the Construction General Permit

UMRA section 202 requires a written statement containing certain assessments, estimates and analyses prior to the promulgation of certain general notices of proposed rulemaking (2 U.S.C. 1532). UMRA section 421(10) defines "rule" based on the definition of rule in the Regulatory Flexibility Act. Section 601 of the Regulatory Flexibility Act defines "rule" to mean any rule for which an agency publishes a general notice of proposed rulemaking pursuant to section 553 of the Administrative Procedure Act. EPA does not propose to issue NPDES general permits based on APA section 553. Instead, EPA relies on publication of general permits in the **Federal Register** in order to provide "an opportunity for a hearing" under CWA section 402(a), 33 U.S.C. section 1342(a). Nonetheless, EPA has evaluated permitting alternatives for regulation of storm water discharges associated with construction activity. The general permit that EPA proposes to re-issue would be virtually the same NPDES general permit for construction that many construction operators have used over the past five years. Furthermore, general permits provide a more cost and time efficient alternative for the regulated community to obtain NPDES permit coverage than that provided through individually drafted permits.

B. UMRA Section 203 and the Construction General Permit

Agencies are required to prepare small government agency plans under UMRA section 203 prior to establishing any regulatory requirement that might significantly or uniquely affect small governments. "Regulatory requirements" might, for example, include the requirements of these NPDES general permits for discharges associated with construction activity, especially if a municipality sought coverage under one of the general permits. EPA envisions that some municipalities—those with municipal separate storm sewer systems serving a population over 100,000—may elect to seek coverage under these proposed general permits. For many municipalities, however, a permit application is not required until August 7, 2001, for a storm water discharge associated with construction activity where the construction site is owned or operated by a municipality with a population of less than 100,000. (See 40 CFR 122.26(e)(1)(ii)&(g)).

In any event, any such permit requirements would not significantly affect small governments because most State laws already provide for the control of sedimentation and erosion in a similar manner as today's general permit. Permit requirements also would not uniquely affect small governments because compliance with the permit's conditions affects small governments in the same manner as any other entity seeking coverage under the permit. Thus, UMRA section 203 would not apply.

XII. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* On June 2, 1997, EPA solicited comments on the proposed revision to the current Information Collection Request (ICR) document for this permit (ICR approved OMB: OMB No. 2040-0086, expiration, August 31, 1998) to accommodate the increased information requirements in the new NOI for the construction general permit (62 FR 29826). EPA estimates an increase in the burden associated with filling out the NOI form for the permit due to added requirements under the Endangered Species Act. EPA also anticipates a small increase in the time because of the requirement to submit an NOT upon completion of construction activities.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The permit explains that applicants must use the existing NOI form until EPA publishes a **Federal Register** notice announcing OMB approval of the revised NOI form. Applicants must use the revised NOI form after this notice is published.

XIII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, a Federal agency must prepare an initial regulatory flexibility analysis "for any proposed rule" for which the agency "is required by section 553 of [the Administrative Procedure Act (APA)], or any other law, to publish general notice of proposed rulemaking." The RFA exempts from this requirement any rule that the issuing agency certifies "will not, if promulgated, have a significant economic impact on a substantial number of small entities."

EPA did not prepare an initial regulatory flexibility analysis (IRFA) for the proposed CGP. (Note that in today's action, EPA is issuing a separate general permit for each jurisdiction where EPA issues permits; i.e., in certain States, Indian Country lands and Federal facilities within certain States. However, for purposes of readability, reference is made to the permits in the singular form such as "permit" or "CGP" rather than in plural form.) In the notice of the proposed permit, EPA explained its view that issuance of an NPDES general permit is not subject to rulemaking requirements, including the requirement for a general notice of proposed rulemaking, under APA section 553 or any other law, and is thus not subject to the RFA requirement to prepare an IRFA. Nevertheless, in keeping with EPA's policy to consider the impact of its actions on small entities even when it is not legally required to do so, the Agency considered the potential impact of the permit on small entities that would be eligible for coverage under the permit. EPA concluded that the permit, if issued as drafted, would not have a significant impact on a substantial number of small entities. EPA based its conclusion on the fact that the draft permit was largely the same as the current permit and, to the extent it differed, provided dischargers with more flexibility than the current permit allowed.

Some commenters on the proposed CGP disagreed with EPA's conclusions

that NPDES general permits are not subject to rulemaking requirements and that the proposed permit would not have a significant impact on small entities. They asserted that the CGP is subject to rulemaking requirements and thus the RFA, and that the Agency should have prepared an IRFA for the permit.

In light of the comments received, EPA further considered whether NPDES general permits are subject to rulemaking requirements. The Agency reviewed its previous NPDES general permitting actions and related statements in the *Federal Register* or elsewhere. This review suggests that the Agency has generally treated NPDES general permits effectively as rules, though at times it has given contrary indications as to whether these actions are rules or permits. EPA also reviewed again the applicable law, including the CWA, relevant CWA case law and the APA, as well as the Attorney General's Manual on the APA (1947). On the basis of its review, EPA has concluded, as set forth in the proposal, that NPDES general permits are permits under the APA and thus not subject to APA rulemaking requirements or the RFA.

The APA defines two broad, mutually exclusive categories of agency action—"rules" and "orders." Its definition of "rule" encompasses "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency * * *." APA section 551(4). Its definition of "order" is residual: "a final disposition * * * of an agency in a matter other than rule making but including licensing." APA section 551(6) (emphasis added). The APA defines "license" to "include * * * an agency permit * * *." APA section 551(8). The APA thus categorizes a permit as an order, which by the APA's definition is not a rule.

Section 553 of the APA establishes "rule making" requirements. The APA defines "rule making" as "the agency process for formulating, amending, or repealing a rule." APA section 551(5). By its terms, then, section 553 applies only to "rules" and not also to "orders," which include permits. As the Attorney General's Manual on the APA explains, "the entire Act is based upon a dichotomy between rule making and adjudication [the agency process for formulation of an order]" (p. 14).

The CWA specifies the use of permits for authorizing the discharge of pollutants to waters of the United States. Section 301(a) of the CWA prohibits discharges of pollutants

"[except as in compliance with" specified sections of the CWA, including section 402. 33 U.S.C. 1311(a). Section 402 of the CWA authorizes EPA "to issue a permit for the discharge of any pollutant * * *, notwithstanding section [301(a) of the CWA]." 33 U.S.C. 1342(a). Thus, the only circumstances in which a discharge of pollution may be authorized is where the Agency has issued a permit for the discharge. Courts, recognizing that a permit is the necessary condition-precedent to any lawful discharge, specifically suggested the use of area-wide and general permits as a mechanism for addressing the Agency's need to issue a substantial number of permits. See *NRDC v. Train*, 396 F.Supp. 1393, 1402 (D.D.C. 1975); *NRDC v. Costle*, 568 F.2d 1369, 1381 (D.C. Cir. 1977). Adopting the courts' suggestion, EPA has made increasing use of general permits in its CWA regulatory program, particularly for storm water discharges.

In the Agency's view, the fact that an NPDES general permit may apply to a large number of different dischargers does not convert it from a permit into a rule. As noted above, the courts which have faced the issue of how EPA can permit large numbers of discharges under the CWA have suggested use of a general permit, not a rule. Under the APA, the two terms are mutually exclusive. Moreover, an NPDES general permit retains unique characteristics that distinguish a permit from a rule. First, today's NPDES general permit for storm water discharges associated with construction activity is effective only with respect to those dischargers that choose to be bound by the permit. Thus, unlike the typical rule, this NPDES general permit does not impose immediately effective obligations of general applicability. A discharger must choose to be covered by this general permit and so notify EPA. A discharger always retains the option of obtaining its own individual permit. Relatedly, the terms of the NPDES general permit are enforceable only against dischargers that choose to make use of the permit. If a source discharges without authorization of a general or an individual permit, the discharger violates section 301 of the Act for discharging without a permit, not for violating the terms of an NPDES general permit.

Because the CWA and its case law make clear that NPDES permits are the congressionally chosen vehicle for authorizing discharges of pollutants to waters of the United States, the APA's rulemaking requirements are inapplicable to issuance of such

permits, including today's general permit. Further, while the CWA requires that NPDES permits be issued only after an opportunity for a hearing, it does not require publication of a general notice of proposed rulemaking. Thus, NPDES permitting is not subject to the requirement to publish a general notice of proposed rulemaking under the APA or any other law. Accordingly, it is not subject to the RFA.

At the same time, the Agency recognizes that the question of the applicability of the APA, and thus the RFA, to the issuance of a general permit is a difficult one, given the fact that a large number of dischargers may choose to use the general permit. Indeed, the point of issuing a general permit is to provide a speedier means of permitting large number of sources and save dischargers and EPA time and effort. Since the Agency hopes that many dischargers will make use of a general permit and since the CWA requires EPA to provide an opportunity for "a hearing" prior to issuance of a permit, EPA provides the public with notice of a draft general permit and an opportunity to comment on it. From public comments, EPA learns how to better craft a general permit to make it appropriate for, and acceptable to, the largest number of potential permittees. This same process also provides an opportunity for EPA to consider the potential impact of general permit terms on small entities and how to craft the permit to avoid any undue burden on small entities. This process, however, is voluntary, and does not trigger rulemaking or RFA requirements.

In the case of the CGP being issued today, the Agency has considered and addressed the potential impact of the general permit on small entities in a manner that would meet the requirements of the RFA if it applied. Specifically, EPA has analyzed the potential impact of the general permit on small entities and found that it will not have a significant economic impact on a substantial number of small entities. Like the previous general permit that it replaces (the Baseline Construction General Permit), the permit will make available to many small entities, particularly operators of construction sites, a streamlined process for obtaining authorization to discharge. Of the possible permitting mechanisms available to dischargers subject to the CWA, NPDES general permits are designed to reduce the reporting and monitoring burden associated with NPDES permit authorization, especially for small entities with discharges having comparatively less potential for environmental degradation than

discharges typically regulated under individual NPDES permits. Thus, general permits like the permit at issue here provide small entities with a permitting application option that is much less burdensome than NPDES individual permit applications.

Furthermore, the general permit is virtually identical to its predecessor, the Baseline Construction General Permit, under which many construction operators have operated during the past five years. Moreover, the other new provisions of the permit have been designed to minimize burdens on small entities, including eliminating the requirement that construction site operators require that their contractors and subcontractors sign a standard certification statement agreeing to abide by storm water pollution prevention plan provisions developed for a project. In today's general permit, only the operator(s) of a construction site are required to satisfy certification requirements under the permit. EPA believes this modification from the prior permit should reduce any such adverse economic impacts on both operators and contractors/subcontractors who, in many instances, are small entities. In view of the foregoing, the Regional Administrators find that the final general permit, even if it were a rule, will not have a significant economic impact on a substantial number of small entities.

EPA is committed to issuing general permits that meet the substantive and procedural requirements of the statute authorizing the particular general permit and any other applicable law. The Agency intends to review its use of general permits across EPA programs to ensure that its general permits meet all applicable requirements.

Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this permit will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

Dated: January 21, 1998.

John DeVillars,
Regional Administrator, Region I.

XIV. Official Signatures

Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this permit will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

Dated: January 27, 1998.

Jeanne M. Fox,
Regional Administrator, Region 2.

Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this permit will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

W. Michael McCabe,
Acting Regional Administrator, Region III.

Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this permit will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

Dated: January 16, 1998.

William W. Rice,
Acting Regional Administrator, Region 7.

Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this permit will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

Dated: January 15, 1998.

William P. Yellowtail,
Regional Administrator, Region VIII.

Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this permit will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

Dated: January 29, 1998.

Felicia Marcus,
Regional Administrator, Region 9.

Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this permit will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

Dated: January 20, 1998.

Chuck Clarke,
Regional Administrator, Region 10.

Storm Water General Permit for Construction Activities

Cover Page

Permit No. [See Part I.A.]

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et seq.), except as provided

in Part I.B.3 of this permit, operators of construction activities located in an area specified in Part I.A. and who submit a Notice of Intent in accordance with Part II, are authorized to discharge pollutants to waters of the United States in accordance with the conditions and requirements set forth herein.

This permit shall become effective on February 17, 1998.

This permit and the authorization to discharge shall expire at midnight, February 17, 2003.

Signed and issued this 20th day of January, 1998.

Linda M. Murphy,
Director, Office of Ecosystem Protection.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the corresponding State, Indian Country land, or other area in Region 1.

Storm Water General Permit for Construction Activities

Cover Page

Permit No. [See Part I.A.]

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et seq.), except as provided in Part I.B.3 of this permit, operators of construction activities located in an area specified in Part I.A. and who submit a Notice of Intent in accordance with Part II, are authorized to discharge pollutants to waters of the United States in accordance with the conditions and requirements set forth herein.

This permit shall become effective on February 17, 1998.

This permit and the authorization to discharge shall expire at midnight, February 17, 2003.

Signed and issued this 22nd day of January, 1998.

Kathleen C. Callahan,
Division of Environmental Planning and Protection Director, Region 2.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the corresponding State, Indian Country land, or other area in Region 2.

Storm Water General Permit for Construction Activities

Cover Page

Permit No. [See Part I.A.]

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33

U.S.C. 1251 et. seq.), except as provided in Part I.B.3 of this permit, operators of construction activities located in an area specified in Part I.A. and who submit a Notice of Intent in accordance with Part II, are authorized to discharge pollutants to waters of the United States in accordance with the conditions and requirements set forth herein.

This permit shall become effective on February 17, 1998.

This permit and the authorization to discharge shall expire at midnight, February 17, 2003.

Signed and issued this 22nd day of January, 1998.

Thomas Maslany,
Water Management Director.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the corresponding State, Indian Country land, or other area in Region 3.

Storm Water General Permit for Construction Activities

Cover Page

Permit No. [See Part I.A.]

Authorizatin To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq.), except as provided in Part I.B.3 of this permit, operators of construction activities located in an area specified in Part I.A. and who submit a Notice of Intent in accordance with Part II, are authorized to discharge pollutants to waters of the United States in accordance with the conditions and requirements set forth herein.

This permit shall become effective on February 17, 1998.

This permit and the authorization to discharge shall expire at midnight, February 17, 2003.

Signed and issued this 16th day of January, 1998.

U. Gale Hutton,
Director, Water, Wetlands, and Pesticides Division, U.S. Environmental Protection Agency, Region 7.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the corresponding State, Indian Country land, or other area in Region 7.

Storm Water General Permit for Construction Activities

Cover Page

Permit No. [See Part I.A.]

Authorizatin To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq.), except as provided in Part I.B.3 of this permit, operators of construction activities located in an area specified in Part I.A. and who submit a Notice of Intent in accordance with Part II, are authorized to discharge pollutants to waters of the United States in accordance with the conditions and requirements set forth herein.

This permit shall become effective on February 17, 1998.

This permit and the authorization to discharge shall expire at midnight, February 17, 2003.

Signed and issued this 15th day of January, 1998.

Kerrigan G. Clough,
Assistant Regional Administrator, Office of Pollution Prevention, State and Tribal Assistance.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the corresponding State, Indian Country land, or other area in Region 8.

Storm Water General Permit for Construction Activities

Cover Page

Permit No. [See Part I.A.]

Authorizatin To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq.), except as provided in Part I.B.3 of this permit, operators of construction activities located in an area specified in Part I.A. and who submit a Notice of Intent in accordance with Part II, are authorized to discharge pollutants to waters of the United States in accordance with the conditions and requirements set forth herein.

This permit shall become effective on February 17, 1998.

This permit and the authorization to discharge shall expire at midnight, February 17, 2003.

Signed and issued this 29th day of January, 1998.

Alexis Strauss,
Acting Director, Water Division, Region 9.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities

located in the corresponding State, Indian Country land, or other area in Region 9.

Storm Water General Permit for Construction Activities

Cover Page

Permit No. [See part I.A.]

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In accordance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et seq.), except as provided in Part I.B.3 of this permit, operators of construction activities located in an area specified in Part I.A. and who submit a Notice of Intent in accordance with Part II, are authorized to discharge pollutants to waters of the United States in accordance with the conditions and requirements set forth herein.

This permit shall become effective on February 17, 1998.

This permit and the authorization to discharge shall expire at midnight, February 17, 2003.

Signed and issued this 20th day of January, 1998.

Philip G. Millam,
Director, Office of Water, Region 10.

This signature is for the permit conditions in Parts I through IX and for any additional conditions in Part X which apply to facilities located in the corresponding State, Indian Country land, or other area in Region 10.

NPDES General Permits for Storm Water Discharges From Construction Activities

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Part I. Coverage Under This Permit**A. Permit Area**

The permit language is structured as if it were a single permit, with State, Indian Country land, or other area-specific conditions specified in Part X. Permit coverage is actually provided by legally separate and distinctly numbered permits covering each of the following areas:

Region 1

CTR10*##I: Indian Country lands in the State of Connecticut.

MAR10*###: Commonwealth of Massachusetts, except Indian Country lands.

MAR10*##I: Indian Country lands in the Commonwealth of Massachusetts.

MER10*###: State of Maine, except Indian Country lands.

MER10*##I: Indian Country lands in the State of Maine.

NHR10*###: State of New Hampshire.

RIR10*##I: Indian Country lands in the State of Rhode Island.

VTR10*##F: Federal Facilities in the State of Vermont.

Region 2

NYR10*##I: Indian Country lands in the State of New York.

PRR10*###: The Commonwealth of Puerto Rico.

Region 3

DCR10*###: The District of Columbia.

DER10*##F: Federal Facilities in the State of Delaware.

Region 4

Coverate Not Available. Construction activities in Region 4 must obtain permit coverage under an alternative general permit.

Region 5

Coverage Not Available.

Region 6

Coverage Not Available.

Region 7

IAR10*##I: Indian Country lands in the State of Iowa.

KSR10*##I: Indian Country lands in the State of Kansas.

NER10*##I: Indian Country lands in the State of Nebraska, except Pine Ridge Reservation lands (see Region 8).

Region 8

COR10*##F: Federal Facilities in the State of Colorado, except those located on Indian Country lands.

COR10*##I: Indian Country lands in the State of Colorado, including the portion of the Ute Mountain Reservation located in New Mexico.

MTR10*##I: Indian Country lands in the State of Montana.

NDR10*##I: Indian Country lands in the State of North Dakota, including that portion of the Standing Rock Reservation located in South Dakota (except for the Lake Traverse Reservation which is covered under South Dakota permit SDR10*##I listed below).

SDR10*##I: Indian Country lands in the State of South Dakota, including the portion of the Pine Ridge Reservation located in Nebraska and the portion of the Lake Traverse Reservation located in North Dakota (except for the Standing Rock Reservation which is covered under North Dakota permit NDR10*##I listed above).

UTR10*##I: Indian Country lands in the State of Utah, except Goshute and Navajo Reservation lands (see Region 9).

WYR10*##I: Indian Country lands in the State of Wyoming.

Region 9

ASR10*###: The Island of American Samoa.

AZR10*###: The State of Arizona, except Indian Country lands.

AZR10*##I: Indian Country lands in the State of Arizona, including Navajo Reservation lands in New Mexico and Utah.

CAR10*##I: Indian Country lands in the State of California.

GUR10*###: The Island of Guam.

JAR10*###: Johnston Atoll.

MWR10*###: Midway Island and Wake Island.

NIR10*###: Commonwealth of the Northern Mariana Islands.

NVR10*##I: Indian Country lands in the State of Nevada, including the Duck Valley Reservation in Idaho, the Fort McDermitt Reservation in Oregon and the Goshute Reservation in Utah.

Region 10

AKR10*###: The State of Alaska, except Indian Country lands.

AKR10*##I: Indian Country lands in Alaska.

IDR10*###: The State of Idaho, except Indian Country lands.

IDR10*##I: Indian Country lands in the State of Idaho, except Duck Valley Reservation lands (see Region 9).

ORR10*##I: Indian Country lands in the State of Oregon except Fort McDermitt Reservation lands (see Region 9).

WAR10*##F: Federal Facilities in the State of Washington, except those located on Indian Country lands.

WAR10*##I: Indian Country lands in the State of Washington.

B. Eligibility

1. Permittees are authorized to discharge pollutants in storm water runoff associated with construction activities as defined in 40 CFR 122.26(b)(14)(x) and those construction site discharges designated by the Director as needing a storm water permit under 122.26(a)(1)(v) or under 122.26(a)(9) and 122.26(g)(1)(i). Discharges identified under Part I.B.3 are excluded from coverage. Any discharge authorized by a different NPDES permit may be commingled with discharges authorized by this permit.

2. This permit also authorizes storm water discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided:

- a. The support activity is directly related to a construction site that is required to have NPDES permit coverage for discharges of storm water associated with construction activity;
- b. The support activity is not a commercial operation serving multiple unrelated construction projects by different operators, and does not operate beyond the completion of the

construction activity at the last construction project it supports; and

c. Appropriate controls and measures are identified in a storm water pollution prevention plan covering the discharges from the support activity areas.

3. Limitations on Coverage. A. *Post Construction Discharges*. This permit does not authorize storm water discharges that originate from the site after construction activities have been completed and the site, including any temporary support activity site, has undergone final stabilization. Industrial post-construction storm water discharges may need to be covered by a separate NPDES permit.

B. *Discharges Mixed With Non-Storm Water*. This permit does not authorize discharges that are mixed with sources of non-storm water, other than those discharges which are identified in Part II.A.2. or 3. (exceptions to prohibition on non-storm water discharges) and are in compliance with Part IV.D.5 (non-storm water discharges).

C. *Discharges Covered by Another Permit*. This permit does not authorize storm water discharges associated with construction activity that have been covered under an individual permit or required to obtain coverage under an alternative general permit in accordance with Part VI.L.

d. *Discharges Threatening Water Quality*. This permit does not authorize storm water discharges from construction sites that the Director (EPA) determines will cause, or have reasonable potential to cause or contribute to, violations of water quality standards. Where such determinations have been made, the Director may notify the operator(s) that an individual permit application is necessary in accordance with Part VI.L. However, the Director may authorize coverage under this permit after appropriate controls and implementation procedures designed to bring the discharges into compliance with water quality standards has been included in the storm water pollution prevention plan:

e. *Storm water discharges and storm water discharge-related activities that are not protective of Federally listed endangered and threatened ("listed") species or designated critical habitat ("critical habitat")*.

(1) For the purposes of complying with the Part I.B.3.e. eligibility requirements, "storm water discharge-related activities" include:

(a) Activities which cause, contribute to, or result in point source storm water pollutant discharges, including but not limited to: excavation, site development, grading and other surface disturbance activities; and

(b) Measures to control storm water including the siting, construction and operation of best management practices (BMPs) to control, reduce or prevent storm water pollution.

(2) Coverage under this permit is available only if the applicant certifies that it meets at least one of the criteria in paragraphs (a)–(d) below. Failure to continue to meet one of these criteria during the term of the permit will render a permittee ineligible for coverage under this permit.

(a) The storm water discharges and storm water discharge-related activities are not likely to adversely affect listed species or critical habitat; or

(b) Formal or informal consultation with the Fish and Wildlife Service and/or the National Marine Fisheries Service (the "Services") under section 7 of the Endangered Species Act (ESA) has been concluded which addresses the effects of the applicant's storm water discharges and storm water discharge-related activities on listed species and critical habitat and the consultation results in either a no jeopardy opinion or a written concurrence by the Service(s) on a finding that the applicant's storm water discharges and storm water discharge-related activities are not likely to adversely affect listed species or critical habitat. A section 7 consultation may occur in the context of another Federal action (e.g., a ESA section 7 consultation was performed for issuance of a wetlands dredge and fill permit for the project, or as part of a National Environmental Policy Act (NEPA) review); or

(c) The applicant's construction activities are authorized under section 10 of the ESA and that authorization addresses the effects of the applicant's storm water discharges and storm water discharge-related activities on listed species and critical habitat; or

(d) The applicant's storm water discharges and storm water discharge-related activities were already addressed in another operator's certification of eligibility under Part I.B.3.e.(2)(a), (b), or (c) which included the applicant's project area. By certifying eligibility under Part I.B.3.e.(2)(d), the applicant agrees to comply with any measures or controls upon which the other operator's certification under Part I.B.3.e.(2)(a), (b) or (c) was based.

(3) All applicants must follow the procedures provided at Addendum A of this permit when applying for permit coverage.

(4) The applicant must comply with any applicable terms, conditions or other requirements developed in the process of meeting eligibility requirements of Part I.B.3.e.(2)(a), (b),

(c), or (d) above to remain eligible for coverage under this permit. Such terms and conditions must be incorporated in the applicant's storm water pollution prevention plan.

(5) Applicants who choose to conduct informal consultation to meet the eligibility requirements of Part I.B.3.e.(2)(b) are automatically designated as non-Federal representatives under this permit. See 50 CFR 402.08. Applicants who choose to conduct informal consultation as a non-Federal representatives must notify EPA and the appropriate Service office in writing of that decision.

(6) This permit does not authorize any storm water discharges where the discharges or storm water discharge-related activities cause prohibited "take" (as defined under section 3 of the Endangered Species Act and 50 CFR 17.3) of endangered or threatened species unless such takes are authorized under section 7 or 10 of the Endangered Species Act.

(7) This permit does not authorize any storm water discharges where the discharges or storm water discharge-related activities are likely to jeopardize the continued existence of any species that are listed or proposed to be listed as endangered or threatened under the ESA or result in the adverse modification or destruction of habitat that is designated or proposed to be designated as critical under the ESA.

f. *Storm Water Discharges and Storm Water Discharge-Related Activities with Unconsidered Adverse Effects on Historic Properties*. (Reserved)

C. Obtaining Authorization

1. In order for storm water discharges from construction activities to be authorized under this general permit, an operator must:

a. Meet the Part I.B. eligibility requirements;

b. Except as provided in Parts II.A.5 and II.A.6, develop a storm water pollution prevention plan (SWPPP) covering either the entire site or all portions of the site for which they are operators (see definition in Part IX.N) according to the requirements in Part IV. A "joint" SWPPP may be developed and implemented as a cooperative effort where there is more than one operator at a site; and

c. Submit a Notice of Intent (NOI) in accordance with the requirements of Part II, using an NOI form provided by the Director (or a photocopy thereof). Only one NOI need be submitted to cover all of the permittee's activities on the common plan of development or sale (e.g., you do not need to submit a separate NOI for each separate lot in a

residential subdivision or for two separate buildings being constructed at a manufacturing facility, provided your SWPPP covers each area for which you are an operator). The SWPPP must be implemented upon commencement of construction activities.

2. Any new operator on site, including those who replace an operator who has previously obtained permit coverage, must submit an NOI to obtain permit coverage.

3. Unless notified by the Director to the contrary, operators who submit a correctly completed NOI in accordance with the requirements of this permit are authorized to discharge storm water from construction activities under the terms and conditions of this permit two (2) days after the date that the NOI is postmarked. The Director may deny coverage under this permit and require submittal of an application for an individual NPDES permit based on a review of the NOI or other information (see Part VI.L).

D. Terminating Coverage

1. Permittees wishing to terminate coverage under this permit must submit a Notice of Termination (NOT) in accordance with part VIII of this permit. Compliance with this permit is required until an NOT is submitted. The permittee's authorization to discharge under this permit terminates at midnight of the day the NOT is signed.

2. All permittees must submit an NOT within thirty (30) days after one or more of the following conditions have been met:

a. Final stabilization (see definition Part IX.I) has been achieved on all portions of the site for which the permittee is responsible (including if applicable, returning agricultural land to its pre-construction agricultural use);

b. Another operator/permittee has assumed control according to Part VI.G.2.c. over all areas of the site that have not been finally stabilized; or

c. For residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner.

Enforcement actions may be taken if a permittee submits an NOT without meeting one or more of these conditions.

Part II. Notice of Intent Requirements

A. Deadlines for Notification

1. Except as provided in Part II.A.3, II.A.4, II.A.5 or II.A.6 below, parties defined as operators (see definition in Part IX.N) due to their operational control over construction plans and specifications, including the ability to

make modifications to those plans and specifications, must submit a Notice of Intent (NOI) in accordance with the requirements of this Part at least two (2) days prior to the commencement of construction activities (i.e., the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities).

2. Except as provided in parts II.A.3, II.A.4, II.A.5 or II.A.6 below, parties defined as operators (see definition in Part IX.N) due to their day-to-day operational control over activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan or other permit conditions (e.g., general contractor, erosion control contractor) must submit an NOI at least two (2) days prior to commencing work on-site.

3. For storm water discharges from construction projects where the operator changes, including instances where an operator is added after an NOI has been submitted under Parts II.A.1 or II. A.2, the new operator must submit an NOI at least two (2) days before assuming operational control over site specifications or commencing work on-site.

4. Operators are not prohibited from submitting late NOIs. When a late NOI is submitted, authorization is only for discharges that occur after permit coverage is granted. The Agency reserves the right to take appropriate enforcement for any unpermitted activities that may have occurred between the time construction commenced and authorization of future discharges is granted (typically 2 days after a complete NOI is submitted).

5. Operators of on-going construction projects as of the effective date of this permit which received authorization to discharge for these projects under the 1992 baseline construction general permit must:

a. Submit a NOI according to Part II.B. within 90 days of the effective date of this permit. If the permittee is eligible to submit a Notice of Termination (e.g., construction is finished and final stabilization has been achieved) before the 90th day, a new NOI is not required to be submitted;

b. For the first 90 days from the effective date of this permit, comply with the terms and conditions of the 1992 baseline construction general permit they were previously authorized under; and

c. Update their storm water pollution prevention plan to comply with the requirements of Part IV within 90 days after the effective date of this permit.

6. Operators of on-going construction projects as of the effective date of this

permit which did *not* receive authorization to discharge for these projects under the 1992 baseline construction general permit must:

a. Prepare and comply with an interim storm water pollution prevention plan in accordance with the 1992 baseline construction general permit prior to submitting an NOI;

b. Submit a NOI according to Part II.B; and

c. Update their storm water pollution prevention plan to comply with the requirements of Part IV within 90 days after the effective date of this permit.

B. Contents of Notice of Intent (NOI)

1. Interim Use of Existing NOI Form

Until the revised NOI form is published as final in the **Federal Register**, operators must use EPA's existing NOI form [EPA Form 3510-6 (8-98)] to apply for permit coverage.

Note: The revised NOI form is pending approval by the U.S. Office of Management and Budget as of the effective date of this permit.

When using the existing NOI form, operators should only submit information that was required for parties under the baseline construction general permit. However, by completing and signing the existing NOI form to obtain permit coverage, operators are certifying that they meet all applicable eligibility requirements of Part I.B of today's permit and an informing the Director of their intent to be covered by, and comply with, the terms and conditions of this permit. When the revised NOI form is available (through final publication in the **Federal Register**), the existing NOI form will no longer be accepted for permit coverage.

2. Use of Revised NOI Form

The revised NOI form shall be signed in accordance with Part VI.G of this permit and shall include the following information:

a. The name, address, and telephone number of the operator filing the NOI for permit coverage;

b. An indication of whether the operator is a Federal, State, Tribal, private, or other public entity;

c. The name (or other identifier), address, county, and latitude/longitude of the construction project or site;

d. An indication of whether the project or site is located on Indian Country lands;

e. Confirmation that a storm water pollution prevention plan (SWPPP) has been developed or will be developed prior to commencing construction activities, and that the SWPPP will be compliant with any applicable local

sediment and erosion control plans. Copies of SWPPPs or permits should *not* be included with the NOI submission;

f. Optional information: the location where the SWPPP may be viewed and the name and telephone number of a contact person for scheduling viewing times;

g. The name of the receiving water(s);

h. Estimates of project start and completion dates, and estimates of the number of acres of the site on which soil will be distributed (if less than 1 acre, enter "1");

i. Based on the instructions in Addendum A, whether any listed or proposed threatened or endangered species, or designated critical habitat, are in proximity to the storm water discharges or storm water discharge-related activities to be covered by this permit;

j. Under which section(s) of Part I.B.3.e (Endangered Species) the applicant is certifying eligibility; and
Note that as of the effective date of this permit, reporting of information relating to the preservation of historic properties has been reserved and is not required at this time. Such reservation in no way relieves applicants or permittees from any otherwise applicable obligations or liabilities related to historic preservation under State, Tribal or local law. After further discussions between EPA and the Advisory Council on Historic Preservation, the Agency may modify the permit. Any such modification may affect future Notice of Intent reporting requirements.

C. Where To Submit

1. NOIs must be signed in accordance with Part VI.G. and sent to the following address: Storm Water Notice of Intent (4203), US EPA, 401 M. Street, SW, Washington, D.C. 20460.

Part III. Special Conditions, Management Practices, and Other Non-Numeric Limitations

A. Prohibition Non-Storm Water Discharges

1. Except as provided in Parts I.B.2 or 3 and III.A.2 or 3, all discharges covered by this permit shall be composed entirely of storm water associated with construction activity.

2. Discharges of material other than storm water that are in compliance with an NPDES permit (other than this permit) issued for that discharge may be discharged or mixed with discharges authorized by this permit.

3. The following non-storm water discharges from active construction sites are authorized by this permit provided the non-storm water component of the discharge is in compliance with Part

IV.D.5 (non-storm water discharges): discharges from fire fighting activities; fire hydrant flushings; waters used to wash vehicles where detergents are not used; water used to control dust in accordance with Part IV.D.2.c.(2); potable water sources including waterline flushings; routine external building wash down which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning concentrate; uncontaminated ground water or spring water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

B. Releases in Excess of Reportable Quantities

The discharge of hazardous substances or oil in the storm water discharge(s) from a facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. This permit does not relieve the permittee of the reporting requirements of 40 CFR 110, 40 CFR 117 and 40 CFR 302. Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR 110, 40 CFR 117 or 40 CFR 302, occurs during a 24 hour period.

1. The permittee is required to notify the National Response Center (NRC) (800-424-8802; in the Washington, DC, metropolitan area call 202-426-2675) in accordance with the requirements of 40 CFR 110, 40 CFR 117 and 40 CFR 302 as soon as he or she has knowledge of the discharge;

2. The storm water pollution prevention plan required under Part IV of this permit must be modified within 14 calendar days of knowledge of the release to: provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

C. Spills

This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

D. Discharge Compliance With Water Quality Standards

Operators seeking coverage under this permit shall not be causing or have the reasonable potential to cause or contribute to a violation of a water quality standard. Where a discharge is

already authorized under this permit and is later determined to cause or have the reasonable potential to cause or contribute to the violation of an applicable water quality standard, the Director will notify the operator of such violation(s). The permittee shall take all necessary actions to ensure future discharges do not cause or contribute to the violation of a water quality standard and document these actions in the storm water pollution prevention plan. If violations remain or re-occur, then coverage under this permit may be terminated by the Director, and an alternative general permit or individual permit may be issued. Compliance with this requirement does not preclude any enforcement activity as provided by the Clean Water Act for the underlying violation.

E. Responsibilities of Operators

Permittees may meet one or both of the operational control components in the definition of "operator" found in Part IX.N. Either Parts III.E.1 or III.E.2 or both will apply depending on the type of operational control exerted by an individual permittee. Part III.E.3 applies to all permittees.

1. Permittees with operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications (e.g., developer or owner), must:

a. Ensure the project specifications that they develop meet the minimum requirements of Part IV (Storm Water Pollution Prevention Plans (SWPPP)) and all other applicable conditions;

b. Ensure that the SWPPP indicates the areas of the project where they have operational control over project specifications (including the ability to make modifications in specifications), and ensure all other permittees implementing portions of the SWPPP impacted by any changes they make to the plan are notified of such modifications in a timely manner; and

c. Ensure that the SWPPP for portions of the project where they are operators indicates the name and NPDES permit number for parties with day-to-day operational control of those activities necessary to ensure compliance with the SWPPP or other permit conditions. If these parties have not been identified at the time the SWPPP is initially developed, the permittee with operational control over project specifications shall be considered to be the responsible party until such time as the authority is transferred to another party (e.g., general contractor) and the plan updated.

2. Permittee(s) with day-to-day operational control of those activities at a project which are necessary to ensure compliance with a SWPPP for the site or other permit conditions (e.g., general contractor) must:

a. Ensure that the SWPPP for portions of the project where they are operators meets the minimum requirements of Part IV (Storm Water Pollution Plan) and identifies the parties responsible for implementation of control measures identified in the plan;

b. Ensure that the SWPPP indicates areas of the project where they have operational control over day-to-day activities;

c. Ensure that the SWPPP for portions of the project where they are operators indicates the name and NPDES permit number of the party(ies) with operational control over project specifications (including the ability to make modifications in specifications).

3. Permittees with operational control over only a portion of a larger construction project (e.g., one of four homebuilders in a subdivision) are responsible for compliance with all applicable terms and conditions of this permit as it relates to their activities on their portion of the construction site, including protection of endangered species and implementation of BMPs and other controls required by the SWPPP. Permittees shall ensure either directly or through coordination with other permittees, that their activities do not render another party's pollution control ineffective. Permittees must either implement their portions of a common SWPPP or develop and implement their own SWPPP.

Part IV. Storm Water Pollution Prevention Plans

At least one storm water pollution prevention plan (SWPPP) shall be developed for each construction project or site covered by this permit. For more effective coordination of BMPs and opportunities for cost sharing, a cooperative effort by the different operators at a site to prepare and participate in a comprehensive SWPPP is encouraged. Individual operators at a site may, but are not required, to develop separate SWPPPs that cover only their portion of the project provided reference is made to other operators at the site. In instances where there is more than one SWPPP for a site, coordination must be conducted between the permittees to ensure the storm water discharge controls and other measures are consistent with one another (e.g., provisions to protect listed species and critical habitat).

Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The SWPPP shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction site. The SWPPP shall describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges associated with construction activity at the construction site and assure compliance with the terms and conditions of this permit.

When developing SWPPPs, applicants must follow the procedures in Addendum A of this permit to determine whether listed endangered or threatened species or critical habitat would be affected by the applicant's storm water discharges or storm water discharge-related activities. Any information on whether listed species or critical habitat are found in proximity to the construction site must be included in the SWPPP. Any terms or conditions that are imposed under the eligibility requirements of Part I.B.3.e and Addendum A of this permit to protect listed species or critical habitat from storm water discharges or storm water discharge-related activity must be incorporated into the SWPPP. Permittees must implement the applicable provisions of the SWPPP required under this part as a condition of this permit.

A. Deadlines for Plan Preparation and Compliance

The storm water pollution prevention plan shall:

1. Be completed prior to the submittal of an NOI to be covered under this permit (except as provided in Parts II.A.5 and II.A.6) updated as appropriate; and

2. Provide for compliance with the terms and schedule of the SWPPP beginning with the initiation of construction activities.

B. Signature, Plan Review and Making Plans Available

1. The SWPPP shall be signed in accordance with Part VI.G. and be retained on-site at the facility which generates the storm water discharge in accordance with Part V (Retention of Records) or this permit.

2. The permittee shall post a notice near the main entrance of the construction site with the following information:

a. The NPDES permit number for the project or a copy of the NOI if a permit number has not yet been assigned;

b. The name and telephone number of a local contact person;

c. A brief description of the project; and

d. The location of the SWPPP if the site is inactive or does not have an on-site location to store the plan.

If posting this information near a main entrance is infeasible due to safety concerns, the notice shall be posted in a local public building. If the construction project is a linear construction project (e.g., pipeline, highway, etc.), the notice must be placed in a publicly accessible location near where construction is actively underway and moved as necessary. This permit does not provide the public with any right to trespass on a construction site for any reason, including inspection of a site; not does this permit require that permittees allow members of the public access to a construction site.

3. The permittee shall make SWPPPs available upon request to the Director, a State, Tribal or local agency approving sediment and erosion plans, grading plans, or storm water management plans, local government officials; or the operator of a municipal separate storm sewer receiving discharges from the site. The copy of the SWPPP that is required to be kept on-site or locally available must be made available to the Director for review at the time of an on-site inspection. Also, in the interest of public involvement, EPA encourages permittees to make their SWPPPs available to the public for viewing during normal business hours.

4. The Director may notify the permittee at any time that the SWPPP does not meet one or more of the minimum requirements of this Part. Such notification shall identify those provision of this permit which are not being met by the SWPPP as well as those requiring modification in order to meet the minimum requirements of this Part. Within seven (7) calendar days of receipt of such notification from the Director (or as otherwise provided by the Director), the permittee shall make the required changes to the SWPPP and shall submit to the Director a written certification that the requested changes have been made. The Director may take appropriate enforcement action for the period of time the permittee was operating under a plan that did not meet the minimum requirements of this permit.

C. Keeping Plans Current

The permittee must amend the storm water pollution prevention plan whenever:

1. There is a change in design, construction, operation, or maintenance

which has a significant effect on the discharge of pollutants to the waters of the United States which has not been addressed in the SWPPP; or

2. Inspections or investigations by site operators, local, State, Tribal or Federal officials indicate the SWPPP is proving ineffective in eliminating or significantly minimizing pollutants from sources identified under Part IV.D.1 of this permit, or is otherwise not achieving the general objectives of controlling pollutants in storm water discharges associated with construction activity.

D. Contents of Plan

The storm water pollution prevention plan (SWPPP) shall include the following items:

1. Site Description

Each SWPPP shall provide a description of potential pollutant sources and other information as indicated below:

- a. A description of the nature of the construction activity;
- b. A description of the intended sequence of major activities which disturb soils for major portions of the site (e.g., grubbing, excavation, grading, utilities and infrastructure installation);
- c. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading, or other activities including off-site borrow and fill areas;
- d. An estimate of the runoff coefficient of the site for both the pre-construction and post-construction conditions and data describing the soil or the quality of any discharge from the site;
- e. A general location map (e.g., a portion of a city or county map) and a site map indicating the following: Drainage patterns and approximate slopes anticipated after major grading activities; areas of soil disturbance; areas which will not be disturbed; locations of major structural and nonstructural controls identified in the SWPPP; locations where stabilization practices are expected to occur; locations of off-site material, waste, borrow or equipment storage areas; surface waters (including wetlands); and locations where storm water discharges to a surface water;
- f. Location and description of any discharge associated with industrial activity other than construction, including storm water discharges from dedicated asphalt plants and dedicated concrete plants, which is covered by this permit;
- g. The name of the receiving water(s) and the areal extent and description of

wetlands or other special aquatic sites (as described under 40 CFR 230.3(q-1)) at or near the site which will be disturbed or which will receive discharges from disturbed areas of the project;

h. A copy of the permit requirements (attaching a copy of this permit is acceptable); and

i. Information on whether listed endangered or threatened species, or critical habitat, are found in proximity to the construction activity and whether such species may be affected by the applicant's storm water discharges or storm water discharge-related activities.

2. Controls

Each SWPPP shall include a description of appropriate control measures (i.e., BMPs) that will be implemented as part of the construction activity to control pollutants in storm water discharges. The SWPPP must clearly describe for each major activity identified in Part IV.D.1.b: (a) Appropriate control measures and the general timing (or sequence) during the construction process that the measures will be implemented; and (b) which permittee is responsible for implementation (e.g., perimeter controls for one portion of the site will be installed by Contractor A after the clearing and grubbing necessary for installation of the measure, but before the clearing and grubbing for the remaining portions of the site; and perimeter controls will be actively maintained by Contractor B until final stabilization of those portions of the site up-gradient of the perimeter control; and temporary perimeter controls will be removed by the owner after final stabilization). The description and implementation of control measures shall address the following minimum components:

- a. *Erosion and Sediment Controls.* (1) *Short and Long Term Goals and Criteria.* (a) The construction-phase erosion and sediment controls should be designed to retain sediment on site to the extent practicable. (b) All control measures must be properly selected, installed, and maintained in accordance with the manufacturers specifications and good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the permittee must replace or modify the control for site situations. (c) If sediment escapes the construction site, off-site accumulations of sediment must be removed at a frequency sufficient to minimize offsite (e.g., fugitive sediment in street could be

washed into storm sewers by the next rain and/or pose a safety hazard to users of public streets).

(d) Sediment must be removed from sediment traps or sedimentation ponds when design capacity has been reduced by 50%.

(e) Litter, construction debris, and construction chemicals exposed to storm water shall be prevented from becoming a pollutant source for storm water discharges (e.g., screening outfalls, picked up daily).

(f) Offsite material storage areas (also including overburden and stockpiles of dirt, borrow areas, etc.) used solely by the permitted project are considered a part of the project and shall be addressed in the SWPPP.

(2) *Stabilization Practices.* The SWPPP must include a description of interim and permanent stabilization practices for the site, including a schedule of when the practices will be implemented. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized. Stabilization practices may include but are not limited to: establishment of temporary vegetation, establishment of permanent vegetation, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures. Use of impervious surfaces for stabilization should be avoided.

The following records shall be maintained and attached to the SWPPP: the dates when major grading activities occur; the dates when construction activities temporarily or permanently cease on a portion of the site; and the dates when stabilization measures are initiated.

Except as provided in Parts IV.D.2.a.(2)(a), (b), and (c) below, stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased.

(a) Where the initiation of stabilization measures by the 14th day after construction activity temporary or permanently ceased is precluded by snow cover or frozen ground conditions, stabilization measures shall be initiated as soon as practicable.

(b) Where construction activity on a portion of the site is temporarily ceased, and earth disturbing activities will be resumed within 21 days, temporary stabilization measures do not have to be initiated on that portion of site.

(c) In arid areas (areas with an average rainfall of 0 to 10 inches), semiarid areas (areas with an average annual rainfall of 10 to 20 inches), and areas experiencing droughts where the initiation of stabilization measures by the 14th day after construction activity has temporarily or permanently ceased is precluded by seasonably arid conditions, stabilization measures shall be initiated as soon as practicable.

(3) *Structural Practices.* The SWPPP must include a description of structural practices to divert flows from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable. Structural practices may include but are not limited to: silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Placement of structural practices in floodplains should be avoided to the degree attainable. The installation of these devices may be subject to section 404 of the CWA.

(a) For common drainage locations that serve an area with ten (10) or more acres disturbed at one time, a temporary (or permanent) sediment basin that provides storage for a calculated volume of runoff from a 2 year, 24 hour storm from each disturbed acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. Where no such calculation has been performed, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. When computing the number of acres draining into a common location it is not necessary to include flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin.

In determining whether installing a sediment basin is attainable, the permittee may consider factors such as site soils, slope, available area on site, etc. In any event, the permittee must consider public safety, especially as it relates to children, as a design factor for the sediment basin and alternative sediment controls shall be used where site limitations would preclude a safe design. For drainage locations which serve ten (10) or more disturbed acres at one time and where a temporary

sediment basin or equivalent controls is not attainable, smaller sediment basins and/or sediment traps should be used. Where neither the sediment basin nor equivalent controls are attainable due to site limitations, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries of the construction area and for those side slope boundaries deemed appropriate as dictated by individual site conditions. EPA encourages the use of a combination of sediment and erosion control measures in order to achieve maximum pollutant removal.

(b) For drainage locations serving less than 10 acres, smaller sediment basins and/or sediment traps should be used. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions) of the construction area unless a sediment basin providing storage for a calculated volume of runoff from a 2 year, 24 hour storm or 3,600 cubic feet of storage per acre drained is provided. EPA encourages the use of a combination of sediment and erosion control measures in order to achieve maximum pollutant removal.

b. *Storm Water Management.* A description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed must be included in the SWPPP. Structural measures should be placed on upland soils to the degree attainable. The installation of these devices may also require a separate permit under section 404 of the CWA. Permittees are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with construction activity have been eliminated from the site. However, post-construction storm water BMPs that discharge pollutants from point sources once construction is completed, may in themselves, need authorization under a separate NPDES permit.

(1) Such practices may include but are not limited to: storm water detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems (which combine several practices). The SWPPP shall include an explanation of the technical basis used to select the practices to

control pollution where flows exceed predevelopment levels.

(2) Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel to provide a non-erosive flow velocity from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g. no significant changes in the hydrological regime of the receiving water).

c. *Other Controls.* (1) No solid materials, including building materials, shall be discharged to waters of the United States, except as authorized by a permit issued under section 404 of the CWA.

(2) Off-site vehicle tracking of sediments and the generation of dust shall be minimized.

(3) The SWPPP shall be consistent with applicable State, Tribal and/or local waste disposal, sanitary sewer or septic system regulations to the extent these are located within the permitted area.

(4) The SWPPP shall include a description of construction and waste materials expected to be stored on-site with updates as appropriate. The SWPPP shall also include a description of controls to reduce pollutants from these materials including storage practices to minimize exposure of the materials to storm water, and spill prevention and response.

(5) The SWPPP shall include a description of pollutant sources from areas other than construction (including storm water discharges from dedicated asphalt plants and dedicated concrete plants), and a description of controls and measures that will be implemented at those sites to minimize pollutant discharges.

(6) The SWPPP shall include a description of measures necessary to protect listed endangered or threatened species, or critical habitat, including any terms or conditions that are imposed under the eligibility requirements of Part I.B.3.e.(4) of this permit. Failure to describe and implement such measures will result in storm water discharges from construction activities that are ineligible for coverage under this permit.

d. *Approved State, Tribal or Local Plans.* (1) Permittees which discharge storm water associated with construction activities must ensure their storm water pollution prevention plan is consistent with requirements specified in applicable sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State, Tribal, or local officials.

(2) Storm water pollution prevention plans must be updated as necessary to remain consistent with any changes applicable to protecting surface water resources in sediment erosion site plans or site permits, or storm water management site plans or site permits approved by State, Tribal or local officials for which the permittee receives written notice.

3. Maintenance

All erosion and sediment control measures and other protective measures identified in the SWPPP must be maintained in effective operating condition. If site inspections required by Part IV.D.4. identify BMPs that are not operating effectively, maintenance shall be performed before the next anticipated storm event, or as necessary to maintain the continued effectiveness of storm water controls. If maintenance prior to the next anticipated storm event is impracticable, maintenance must be scheduled and accomplished as soon as practicable.

4. Inspections

Qualified personnel (provided by the permittee or cooperatively by multiple permittees) shall inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every fourteen (14) calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater.

Where sites have been finally or temporarily stabilized, runoff is unlikely due to winter conditions (e.g., site is covered with snow, ice, or frozen ground exists), or during seasonal arid periods in arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (areas with an average annual rainfall of 10 to 20 inches) such inspections shall be conducted at least once every month.

Permittees are eligible for a waiver of monthly inspection requirements until one month before thawing conditions are expected to result in a discharge if all of the following requirements are met: (1) The project is located in an area where frozen conditions are anticipated to continue for extended periods of time (i.e., more than one month); (2) land disturbance activities have been suspended; and (3) the beginning and ending dates of the waiver period are documented in the SWPPP.

a. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for,

pollutants entering the drainage system. Sediment and erosion control measures identified in the SWPPP shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters. Where discharge locations are inaccessible, nearby downstream locations shall be inspected to the extent that such inspections are practicable. Locations where vehicles enter or exit the site shall be inspected for evidence of offsite sediment tracking.

b. Based on the results of the inspection, the SWPPP shall be modified as necessary (e.g., show additional controls on map required by Part IV.D.1; revise description of controls required by Part IV.D.2) to include additional or modified BMPs designed to correct problems identified. Revisions to the SWPPP shall be completed within 7 calendar days following the inspection. If existing BMPs need to be modified or if additional BMPs are necessary, implementation shall be completed before the next anticipated storm event. If implementation before the next anticipated storm event is impracticable, they shall be implemented as soon as practicable.

c. A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, and major observations relating to the implementation of the SWPPP shall be made and retained as part of the SWPPP for at least three years from the date that the site is finally stabilized. Major observations should include: the location(s) of discharges of sediment or other pollutants from the site; location(s) of BMPs that need to be maintained; location(s) of BMPs that failed to operate as designed or proved inadequate for a particular location; and location(s) where additional BMPs are needed that did not exist at the time of inspection. Actions taken in accordance with Part IV.D.4.b of this permit shall be made and retained as part of the storm water pollution prevention plan for at least three years from the date that the site is finally stabilized. Such reports shall identify any incidents of non-compliance. Where a report does not identify any incidents of non-compliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in

accordance with Part VI.G of this permit.

5. Non-Storm Water Discharges

Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A.2 or 3 of this permit that are combined with storm water discharges associated with construction activity must be identified in the SWPPP. The SWPPP shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

Part V. Retention of Records

A. Documents

The permittee shall retain copies of storm water pollution prevention plans and all reports required by this permit, and records of all data used to complete the Notice of Intent to be covered by this permit, for a period of at least three years from the date that the site is finally stabilized. This period may be extended by request of the Director at any time.

B. Accessibility

The permittee shall retain a copy of the storm water pollution prevention plan required by this permit (including a copy of the permit language) at the construction site (or other local location accessible to the Director, a State, Tribal or local agency approving sediment and erosion plans, grading plans, or storm water management plans; local government officials; or the operator of a municipal separate storm sewer receiving discharges from the site) from the date of project initiation to the date of final stabilization. Permittees with day-to-day operational control over SWPPP implementation shall have a copy of the SWPPP available at a central location on-site for the use of all operators and those identified as having responsibilities under the SWPPP whenever they are on the construction site.

C. Addresses

Except for the submittal of NOIs and NOTs (see Parts II.C and VIII.B, respectively), all written correspondence concerning discharges in any State, Indian Country land or from any Federal facility covered under this permit and directed to the EPA, including the submittal of individual permit applications, shall be sent to the address of the appropriate EPA Regional Office listed below:

Region 1: CT, MA, ME, NH, RI, VT
United States EPA, Region 1, Office of
Ecosystem Protection, Municipal

Assistance Unit. John F. Kennedy
Federal Building-CMU, Boston, MA
02203

Region 2: NJ, NY, PR, VI

United States EPA, Region 2, Division
of Environmental Planning and
Protection, (2DEPP-WPB), Water
Programs Branch, 290 Broadway,
New York, NY 10007-1866

Region 3: DE, DC, MD, PA, VA, WV

United States EPA, Region 3, Water
Management Division, (3WM55),
Storm Water Staff, 841 Chestnut
Building, Philadelphia, PA 19107

**Region 7: IA, KS, MO, NE (except see
Region 8 for Pine Ridge Reservation
Lands)**

United States EPA, Region 7, Water,
Wetlands, and Pesticides Division,
NPDES and Facilities Management
Branch, Storm Water Staff, 726
Minnesota Avenue, Kansas City, KS
66101

**Region 8: CO, MT, ND, SD, WY, UT
(except see Region 9 for Goshute
Reservation and Navajo Reservation
lands), the Ute Mountain
Reservation in NM, and the Pine
Ridge Reservation in NE**

United States EPA, Region 8,
Ecosystems Protection Program
(8EPR-EP), Storm Water Staff, 999
18th Street, Suite 500, Denver, CO
80202-2466

**Region 9: AZ, CA, HI, NV, Guam,
American Samoa, the
Commonwealth of the Northern
Mariana Islands, the Goshute
Reservation in UT and NV, the
Navajo Reservation in UT, NM, and
AZ, the Duck Valley Reservation in
ID, Fort McDermitt Reservation in
OR**

United States EPA, Region 9, Water
Management Division, WTR-5,
Storm Water Staff, 75 Hawthorne
Street, San Francisco, CA 94105

**Region 10: AK, WA, ID (except see
Region 9 for Duck Valley
Reservation lands), OR (except see
Region 9 for Fort McDermitt
Reservation)**

United States EPA Region 10, Office
of Water OW-130, Storm Water
Staff, 1200 6th Avenue, Seattle, WA
98101

Part VI. Standard Permit Conditions

A. Duty to Comply

**1. The Permittee Must Comply With All
Conditions of This Permit**

Any permit noncompliance
constitutes a violation of CWA and is
grounds for reinforcement action; for
permit termination, revocation and
reissuance, or modification; or for
denial of a permit renewal application.

**2. Penalties for Violations of Permit
Conditions**

The Director will adjust the civil and
administrative penalties listed below in
accordance with the Civil Monetary
Penalty Inflation Adjustment Rule
Federal Register: December 31, 1996,
Volume 61, Number 252, pages 69359-
69366, as corrected, March 20, 1997,
Volume 62, Number 54, pages 13514-
13517) as mandated by the Debt
Collection Improvement Act of 1996 for
inflation on a periodic basis. This rule
allows EPA's penalties to keep pace
with inflation. The Agency is required
to review its penalties at least once
every four years thereafter and to adjust
them as necessary for inflation
according to a specified formula. The
civil and administrative penalties listed
below were adjusted for inflation
starting in 1996.

a. *Criminal.* (1) *Negligent Violations.*
The CWA provides that any person who
negligently violates permit conditions
implementing sections 301, 302, 306,
307, 308, 318, or 405 of the Act is
subject to a fine of not less than \$2,500
nor more than \$25,000 per day of
violation, or by imprisonment for not
more than 1 year, or both.

(2) *Knowing Violations.* The CWA
provides that any person who
knowingly violates permit conditions
implementing sections 301, 302, 306,
307, 308, 318, or 405 of the Act is
subject to a fine of not less than \$5,000
nor more than \$50,000 per day of
violation, or by imprisonment for not
more than 3 years, or both.

(3) *Knowing Endangerment.* The CWA
provides that any person who
knowingly violates permit conditions
implementing sections 301, 302, 306,
307, 308, 318, or 405 of the Act and who
knows at that time he is placing another
person in imminent danger of death or
serious bodily injury is subject to a fine
of not more than \$250,000, or by
imprisonment for not more than 15
years, or both.

(4) *False Statement.* The CWA
provides that any person who
knowingly makes any false material
statement, representation, or
certification in any application, record,
report, plan, or other document filed or
required to be maintained under the Act
or who knowingly falsifies, tampers
with, or renders inaccurate, any
monitoring device or method required
to be maintained under the Act, shall
upon conviction, be punished by a fine
of not more than \$10,000 or by
imprisonment for not more than two
years, or by both. If a conviction is for
a violation committed after a first
conviction of such person under this

paragraph, punishment shall be by a
fine of not more than \$20,000 per day
of violation, or by imprisonment of not
more than four years, or by both. (See
section 309(c)(4) of the Clean Water
Act).

b. *Civil Penalties.* The CWA provides
that any person who violates a permit
condition implementing sections 301,
302, 306, 307, 308, 318, or 405 of the
Act is subject to a civil penalty not to
exceed \$27,500 per day for each
violation.

c. *Administrative Penalties.* The CWA
provides that any person who violates a
permit condition implementing sections
301, 302, 306, 307, 308, 318, or 405 of
the Act is subject to an administrative
penalty, as follows:

(1) *Class I Penalty.* Not to exceed
\$11,000 violation nor shall the
maximum amount exceed \$27,500.

(2) *Class II Penalty.* Not to exceed
\$11,000 per day for each day during
which the violation continues nor shall
the maximum amount exceed \$137,500.

**B. Continuation of the Expired General
Permit**

If this permit is not reissued or
replaced prior to the expiration date, it
will be administratively continued in
accordance with the Administrative
Procedures Act and remain in force and
effect. Any permittee who was granted
permit coverage prior to the expiration
date will automatically remain covered
by the continued permit until the earlier
of:

1. Reissuance or replacement of this
permit, at which time the permittee
must comply with the Notice of Intent
conditions of the new permit to
maintain authorization to discharge; or
2. The permittee's submittal of a
Notice of Termination; or
3. Issuance of an individual permit for
the permittee's discharges; or
4. A formal permit decision by the
Director not to reissue this general
permit, at which time the permittee
must seek coverage under an alternative
general permit or an individual permit.

**C. Need to Halt or Reduce Activity Not
a Defense**

It shall not be a defense for a
permittee in an enforcement action that
it would have been necessary to halt or
reduce the permitted activity in order to
maintain compliance with the
conditions of this permit.

D. Duty to Mitigate

The permittee shall take all
reasonable steps to minimize or prevent
any discharge in violation of this permit
which has a reasonable likelihood of

adversely affecting human health or the environment.

E. Duty to Provide Information

The permittee shall furnish to the Director or an authorized representative of the Director any information which is requested to determine compliance with this permit or other information.

F. Other Information

When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Director, he or she shall promptly submit such facts or information.

G. Signatory Requirements

All Notices of Intent, Notices of Termination, storm water pollution prevention plans, reports, certifications or information either submitted to the Director or the operator of a large or medium municipal separate storm sewer system, or that this permit requires be maintained by the permittee, shall be signed as follows:

1. All Notices of Intent and Notices of Termination shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25,000,000 (in second-quarter 1980 dollars) if authority to sign documents has been assigned to delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (1) the chief executive officer of the agency, or (2) senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator of EPA).

2. All reports required by this permit and other information requested by the Director or authorized representative of the Director shall be signed by a person described above or by a duly authorized

representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director.

b. The authorization specifies either an individual or position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

c. *Changes to Authorization.* If an authorization under Part II.B is no longer accurate because a different operator has responsibility for the overall operation of the construction site, a new Notice of Intent satisfying the requirements of Part II.B must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative. The change in authorization must be submitted within the time frame specified in Part II.A.3, and sent to the address specified in Part II.C.

d. *Certification.* Any person signing documents under Part VI.G shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

H. Penalties for Falsification of Reports

Section 309(c)(4) of the Clean Water Act provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than two years, or by both.

I. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of

any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

J. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

K. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

L. Requiring an Individual Permit or an Alternative General Permit

1. The Director may require any person authorized by this permit to apply for and/or obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition the Director to take action under this paragraph. Where the Director requires a permittee authorized to discharge under this permit to apply for an individual NPDES permit, the Director shall notify the permittee in writing that a permit application is required. This notification shall include a brief statement of the reasons for this decision, an application form, a statement setting a deadline for the permittee to file the application, and a statement that on the effective date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit shall automatically terminate. Applications shall be submitted to the appropriate Regional Office indicated in Part V.C of this permit. The Director may grant additional time to submit the application upon request of the applicant. If a permittee fails to submit in a timely manner an individual NPDES permit application as required by the Director under this paragraph, then the applicability of this permit to the individual NPDES permittee is automatically terminated at the end of the day specified by the Director for application submittal.

2. Any permittee authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. In such cases, the permittee shall submit an individual application in accordance with the requirements of 40 CFR 122.26(c)(1)(ii), with reasons supporting the request, to the Director at the address for the appropriate Regional Office indicated in Part V.C of this permit. The request may be granted by issuance of any individual permit or an alternative general permit if the reasons cited by the permittee are adequate to support the request.

3. When an individual NPDES permit is issued to a permittee otherwise subject to this permit, or the permittee is authorized to discharge under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual NPDES permit is denied to an owner or operator otherwise subject to this permit, or the owner or operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Director.

M. State/Tribal Environmental Laws

1. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State/Tribal law or regulation under authority preserved by section 510 of the Act.

2. No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

N. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar

systems, installed by a permittee only when necessary to achieve compliance with the conditions of this permit.

O. Inspection and Entry

The permittee shall allow the Director or an authorized representative of EPA, the State/Tribe, or, in the case of a construction site which discharges through a municipal separate storm sewer, an authorized representative of the municipal owner/operator or the separate storm sewer receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;
2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit; and
3. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment).

P. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Part VII. Reopener Clause

A. If there is evidence indicating that the storm water discharges authorized by this permit cause, have the reasonable potential to cause or contribute to, a violation of a water quality standard, the permittee may be required to obtain an individual permit or an alternative general permit in accordance with Part I.C of this permit, or the permit may be modified to include different limitations and/or requirements.

B. Permit modification or revocation will be conducted according to 40 CFR 122.62, 122.63, 122.64 and 124.5.

C. EPA may propose a modification to this permit after further discussions between the Agency and the Advisory Council on Historic Preservation for the protection of historic properties.

Part VIII. Termination of Coverage

A. Notice of Termination

Permittees must submit a completed Notice of Termination (NOT) that is signed in accordance with Part VI.G of this permit when one or more of the conditions contained in Part I.D.2. (Terminating Coverage) have been met

at a construction project. The NOT form found in Addendum D will be used unless it has been replaced by a revised version by the Director. The Notice of Termination shall include the following information:

1. The NPDES permit number for the storm water discharge identified by the Notice of Termination;
2. An indication of whether the storm water discharges associated with construction activity have been eliminated (*i.e.*, regulated discharges of storm water are being terminated) or the permittee is no longer an operator at the site;
3. The name, address and telephone number of the permittee submitting the Notice of Termination;
4. The name of the project and street address (or a description of location if no street address is available) of the construction site for which the notification is submitted;
5. The latitude and longitude of the construction site; and
6. The following certification, signed in accordance with Part VI.G (signatory requirements) of this permit. For construction projects with more than one permittee and/or operator, the permittee need only make this certification for those portions of the construction site where the permittee was authorized under this permit and not for areas where the permittee was not an operator:

"I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that authorized by a general permit have been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this notice of termination, I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this Notice of Termination does not release an operator from liability for any violations of this permit or the Clean Water Act."

For the purposes of this certification, elimination of storm water discharges associated with construction activity means that all disturbed soils at the portion of the construction site where the operator had control have been finally stabilized (as defined in Part IX.I) and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time to ensure final stabilization is maintained, or that all storm water discharges associated with construction activities from the identified site that